

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JOSE L. TORRES PEÑALBERT,

Plaintiff,

v.

CIVIL NO. 98-2424 (RLA)

XYZ, INC. d/b/a MENONITA
GENERAL HOSPITAL, et al.,

Defendants.

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U.S. DISTRICT COURT
SAN JUAN, P.R.

MINUTES OF INITIAL SCHEDULING CONFERENCE
HELD ON OCTOBER 6, 1999
SCHEDULING HEARING ON DIVERSITY JURISDICTION AND
FURTHER STATUS CONFERENCE

At the INITIAL SCHEDULING CONFERENCE held on October 6, 1999 from 11:00 a.m. to 1:00 p.m. plaintiff was represented by ELISA FIGUEROA, ESQ. and defendants were represented as follows:

AIICO & HOSP. MENONITA - JOSE A. IGUINA, ESQ.

DR. RAMON FIGUEROA & - ANSELMO IRIZARRY, ESQ.
TRIPLE S

DR. JORGE CALDERON - IVAN DOMINGUEZ, ESQ.

SIMED as insurer for - GILDA CRUZ-MARTINO, ESQ.
DR. REINALDO CLAUDIO

DR. EDGARDO APONTE - VICKY ACOSTA, ESQ.

THE PARTIES

Dr. Claudio & SIMED

Neither DR. CLAUDIO nor SIMED, as insurer for DR. CALDERON have been served with process in this action. Accordingly, unless

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2 plaintiff serves these codefendants with process on or before
3 October 25, 1999 and files the executed summons returned on or
4 before November 10, 1999 the claims asserted against these
5 codefendants shall be dismissed. Plaintiffs are further ORDERED to
6 serve copy of these minutes along with process upon the
7 aforementioned defendants.

8 Reliance

9 Counsel for HOSPITAL MENONITA identified RELIANCE as its excess
10 insurer. Plaintiffs' Motion to Amend Complaint, filed on October
11 7, 1999 (docket No. 50) is GRANTED. It is further ORDERED that
12 unless plaintiffs serve RELIANCE with process on or before October
13 25, 1999 and file the executed summons returned on or before
14 November 10, 1999 the claims asserted against the excess insurer
15 shall be dismissed. Plaintiff are further ORDERED to serve copy of
16 these minutes along with process upon the excess insurer.

18 Spouses & Unknown Defendants

19 The claims asserted in the amended complaint against the
20 spouses of the individual defendants as well as the unknown
21 defendants are DISMISSED. Judgment shall be entered accordingly.

22 Hospital Employees/Independent Contractors

23 Counsel for AIICO/HOSPITAL MENONITA will identify on or before
24 November 10, 1999 which defendants were hospital employees and which
25 were independent contractors at the time of the events giving rise
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2 to this litigation. Any cross-claims and/or third party complaints
3 shall also be filed by this same deadline.

4 **HEARING ON DIVERSITY JURISDICTION**

5 Defendants allege that based on plaintiff's testimony during
6 the taking of his deposition in July 1999 there is no diversity
7 jurisdiction in this action. They claim plaintiff's move to
8 Massachuset was temporary and prompted by his desire to receive
9 medical treatment. Counsel for plaintiff argued otherwise.

10 Accordingly, a hearing to receive evidence on plaintiff's
11 intention to change his domicile at the time this case was filed was
12 set for **January 14, 2000 at 10:00 a.m.**

13 **MISCELLANEOUS**

14 It appearing that some of the attorneys do not have copy of
15 plaintiff's deposition taken in July 1999, copies of the transcript
16 shall be provided **on or before October 13, 1999** as follows.

- 17
- 18 1. GILDA CRUZ MARTINO, ESQ. shall furnish copies to:
19 attorneys FIGUEROA, DOMINGUEZ and ACOSTA; and
 - 20 2. ANSELMO IRIZARRY, ESQ. shall furnish copy to counsel for
21 AIICO/HOSPITAL MENONITA. Defendants conceded that the
22 time bar defense is no longer apposite in light of the
23 evidence available in the record.

24 The parties indicated that a hearing had been held in the local
25 parallel proceedings in August 1999 to coordinate discovery. A
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2 pretrial conference has been scheduled in that case for February 10,
3 2000. Only plaintiff's deposition and written discovery has been
4 conducted thus far in state court. Some confusion has arisen
5 because even though the same defendants appear named in the local
6 court, not all have been served with process and some are
7 represented by different counsel from those appearing in this forum.
8 DR. CLAUDIO, represented by RITA VELEZ, ESQ. has appeared in those
9 proceedings. However, neither his insurer, SIMED, nor DR. CALDERON,
10 who have appeared in this case have been served in state court.

11 WRITTEN DISCOVERY

12 The interrogatories served upon SIMED, as insurer for DR.
13 CLAUDIO, have gone unanswered. Attorney CRUZ-MARTINO explained that
14 she could only respond on behalf of the insurer and not on behalf
15 of the insured who has yet to be served with process in the federal
16 case. Accordingly, copy of the interrogatories shall be served upon
17 DR. CLAUDIO together with the summons in this action.

18 It further appearing that DR. APONTE recently appeared in this
19 case his counsel must be furnished with all prior written discovery
20 exchanged by the parties thus far in this action. Accordingly,
21 counsel for plaintiffs shall furnish VICKY ACOSTA-RAMIREZ, ESQ. with
22 copy of the following written discovery **on or before October 13,**
23 **1999:**
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2 1. Responses to plaintiffs' interrogatories regarding the
3 facts and expert witnesses by DR. CALDERON;
- 4 2. Responses to plaintiffs' interrogatories and requests for
5 admissions by SIMED as insurer for DR. CLAUDIO;
- 6 3. Responses to plaintiffs' interrogatories by DR. FIGUEROA
7 and TRIPLE S.
- 8 4. Plaintiffs' responses to the written discovery propounded
9 by DR. FIGUEROA; and
- 10 5. Plaintiffs' responses to the written discovery propounded
11 by SIMED as insurer for DR. CLAUDIO.

12 AIICO/HOSPITAL MENONITA shall respond **no later than November**
13 **10, 1999** to the interrogatories propounded by plaintiffs on July 29,
14 1999.

15 AIICO/HOSPITAL MENONITA and DR. APONTE shall propound all
16 written discovery **no later than November 15, 1999.**

17 Plaintiffs shall serve defendants with requests for admissions
18 **no later than November 15, 1999**

19 Counsel for DR. FIGUEROA requested copy of plaintiff's medical
20 records subsequent to the taking of his deposition in July 1999 at
21 which time plaintiff indicated that further surgery had been
22 programmed. Counsel for plaintiff advised that it was her
23 understanding that the surgery had been canceled. A discussion
24 ensued regarding who was responsible for production of these
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2 records. Counsel for plaintiff will procure the documents from DR.
3 SHUB and if not available, will request copy from the Baystate
4 Medical Center in Massachusetts. Attorney FIGUEROA will advise the
5 court, in writing, **no later than October 13, 1999** of the status of
6 this production.

7 Defendants are also interested in copy of plaintiff's
8 application for social security disability benefits which apparently
9 has been denied. ANSELMO IRIZARRY, ESQ. indicated that MR. FUERTES-
10 ROMEU, counsel for plaintiffs in the local case, had furnished RITA
11 VELEZ, ESQ. with written authorization to secure copy of the social
12 security records. MR. IRIZARRY shall file an informative motion
13 with the Court, **no later than October 13, 1999** advising the status
14 of the social security documentation.

15 DEPOSITIONS

16
17 Counsel for DR. FIGUEROA indicated that he wishes to take the
18 deposition of plaintiff's mother and two (2) sisters. Both the
19 mother and the younger sister have moved with plaintiff and are
20 currently residing in Massachusetts. Counsel indicated, however,
21 that it would be more efficient to take these depositions after the
22 jurisdictional issue had been resolved unless they testify at the
23 hearing regarding plaintiff's domicile.

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2 Accordingly, plaintiffs shall file a motion, no later than
3 November 1, 1999, identifying all witnesses expected to testify on
4 plaintiff's behalf at the diversity jurisdiction hearing.

5 In the event that plaintiff's mother and/or sisters are listed
6 as witnesses for the jurisdictional hearing, their depositions shall
7 be taken on December 27, 1999 commencing at 10:00 a.m. Otherwise,
8 the depositions will be taken on January 10, 2000 commencing at
9 10:00 a.m. These depositions will be taken at the office of ELISA
10 FIGUEROA, ESQ.
11

12 Counsel for plaintiffs indicated that she was not planning on
13 taking defendants' depositions but would rather seek the pertinent
14 information from the records and expert reports.

15 The parties do not foresee any additional fact witnesses at
16 this time.

17 EXPERT WITNESSES

18 Plaintiffs have announced the following expert witnesses:

- 19 1. DR. SOLTERO HARRINGTON - pediatric surgery and
20 cardiovascular surgery
- 21 2. DR. LEONEL SHUB - ER medicine
- 22 3. DR. VICTOR LLADO - psychiatrist
- 23 4. FRANCISCO MARTINEZ - economist

24 Plaintiff was already evaluated by DR. LLADO. Only the reports
25 for DR. LLADO and MR. MARTINEZ are pending which shall be produced
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no later than November 10, 1999 together with their deposition fees. Defendants will share the experts' discovery expenses. Counsel for DR. APONTE cautioned that her client had limited resources and did not have insurance coverage for the period at issue.

The depositions of plaintiffs' experts were scheduled as follows:

1. DR. SOLTERO HARRINGTON - November 22, 1999 commencing at 10:00 a.m. at the office of ELISA FIGUEROA, ESQ.
2. DR. SHUB - December 28, 1999 commencing at 10:00 a.m. at the office of ELISA FIGUEROA, ESQ.
3. FRANCISCO MARTINEZ - February 1, 2000 commencing at 10:00 a.m. at the office of ANSELMO IRIZARRY, ESQ.
4. DR. LLADO - February 1, 2000 commencing at 2:30 p.m. at the office of ANSELMO IRIZARRY, ESQ.

The depositions of MR. MARTINEZ and DR. LLADO will be contingent on written confirmation by the defendants on or before January 21, 2000.

DR. FIGUEROA announced DR. REYNOLD LOPEZ ENRIQUEZ, a surgeon, as an expert witness. DR. LOPEZ will provide a preliminary report

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1 on or before November 10, 1999 together with his deposition fees.
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3 The report will be subject to supplementation (1) in the event that
4 the physician needs to evaluate plaintiff and (2) dependent on the
5 information provided by DR. SOLTERO HARRINGTON and DR. SHUB in their
6 depositions.

7 Defendants shall identify any additional experts no later than
8 February 10, 2000.

9 FURTHER STATUS CONFERENCE

10 A FURTHER STATUS CONFERENCE will be held on January 21, 2000
11 at 11:00 a.m. The parties shall contact the chambers of the
12 undersigned to verify where the Conference will be held.
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14 IT IS SO ORDERED.

15 San Juan, Puerto Rico, this 8th day of October, 1999.

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17 RAYMOND L. ACOSTA

18 United States District Judge
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SUMMARY OF DEADLINES AND SETTINGS

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3 **10/13/99** Deadline for attorney CRUZ-MARTINO to provide
4 counsel with copy of plaintiff's deposition
5 transcript.
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7 **10/13/99** Deadline for plaintiffs' counsel to furnish counsel
8 for DR. APONTE copy of all written discovery
9 responses to date.
10
11 **10/13/99** Deadline for plaintiffs to inform status of medical
12 records subsequent to 7/99.
13
14 **10/13/99** Deadline for attorney IRIZARRY to advise status of
15 records of social security disability benefits.
16
17 **10/25/99** Deadline for serving DR. CLAUDIO, SIMED, as insurer
18 for DR. CALDERON and RELIANCE with (1) process, (2)
19 minutes of ISC and (3) interrogatories to DR.
20 CLAUDIO.
21
22 **11/1/99** Deadline for plaintiffs to identify witnesses
23 expected to testify at hearing on diversity
24 jurisdiction.
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26 **11/10/99** Deadline for filing executed summons returned upon
DR. CLAUDIO, SIMED, as insurer for DR. CALDERON, and
RELIANCE.
11/10/99 Deadline for AIICO/HOSP. MENONITA to identify
employees and independent contractors.
11/10/99 Deadline for AIICO/HOSP. MENONITA to file cross-
claims and/or third-party claims.
11/10/99 Deadline for AIICO/HOSP. MENONITA to respond to
plaintiffs' interrogatories propounded on 7/29/99.
11/10/99 Deadline for production of reports and deposition
fees of DR. LLADO and MR. MARTINEZ.
11/10/99 Deadline for production of preliminary report and
deposition fees of DR. REYNOLD LOPEZ.

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1	11/15/99	Deadline for AIICO/HOSP. MENONITA and DR. APONTE to
2		propound written discovery.
3	11/15/99	Deadline for plaintiffs to propound requests for
4		admissions.
5	11/22/99	Deposition of DR. SOLTERO HARRINGTON at 10:00 a.m.
6	12/27/99	Deposition of plaintiff's mother and/or sisters if
7		identified as witnesses for hearing on diversity
		jurisdiction.
8	12/28/99	Deposition of DR. SCHUB at 10:00 a.m.
9	1/10/2000	Depositions of plaintiff's mother and/or sisters
10		commencing at 10:00 a.m.
11	1/14/2000	HEARING on diversity jurisdiction at 10:00 a.m.
12	1/21/2000	FURTHER STATUS CONFERENCE at 11:00 a.m.
13	1/21/2000	Deadline for written confirmation of depositions of
		MR. MARTINEZ and DR. LLADO.
14	2/1/2000	Deposition of MR. MARTINEZ at 10:00 a.m.
15	2/1/2000	Deposition of DR. LLADO at 2:30 p.m.
16	2/10/2000	Deadline for defendants to identify expert
17		witnesses.